PAROL EVIDENCE RULE — NATURE AND SCOPE OF RULE — INAPPLICABILITY IN CRIMINAL PROSECUTIONS. — A New York statute provides that the lessor of a residential building must furnish heat unless there is an agreement to the contrary. In the absence of such an agreement the lessor shall be deemed to have contracted to furnish heat. (NEW YORK SANITARY CODE, § 225.) The defendant was prosecuted for violating the statute. The lease with his tenants contained no stipulation as to heating, but he offered to prove a parol contemporaneous agreement with the tenants absolving him from furnishing heat. *Held*, that the evidence was admissible. *People* v. *Glickman*, 185 N. Y. Supp. 567.

Where criminal intent is the issue, parol evidence bearing upon the state of mind of the defendant at the time he acted is competent even though it contradicts the terms of a written instrument under which he acted. *State* v. *Newman*, 74 N. H. 10, 64 Atl. 761; *Walker* v. *State*, 117 Ala. 42, 23 So. 149. See *People* v. *Barringer*, 76 Hun, 330, 336–337, 27 N. Y. Supp. 700, 704. In the principal case, however, the element of intent does not enter, the defendant's guilt depending entirely on the existence of an agreement which would excuse his failure to act. On principle it might be argued that since the prior parol agreement is here sought to be used for the very purpose for which the writing has superseded it, it should be excluded even in a suit involving others than parties to the writing. See 4 WIGMORE, EVIDENCE, § 2446. But there are numerous authorities for the general proposition that the parol evidence rule does not apply except in suits between parties to the instrument or their privies. *Folinsbee* v. *Sawyer*, 157 N. Y. 196, 51 N. E. 994; *Northern Assurance Co.* v. *Chicago Mutual Bldg., etc. Assn*, 198 Ill. 474, 64 N. E. 979; *Kellogg* v. *Tompson*, 142 Mass. 76, 6 N. E. 860. This rule has been applied in a criminal case where, as in the principal case, no question of intent was involved, on the ground that the state was not a party to the writing. *Roselle* v. *Commonwealth*, 110 Va. 235, 65 S. E. 526, aff'd, 223 U. S. 716.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — PRESUMPTION OF VALIDITY OF SECOND MARRIAGE. — The defendant's first husband, when last heard from, had been injured in a railroad accident. Three years later she married the plaintiff. This suit for annulment is brought twenty years after the second marriage, alleging invalidity because of the prior marriage. *Held*, that annulment be denied. *Smith* v. *Smith*, 185 N. Y. Supp. 558.

Once a marriage ceremony is performed, there is said to be a presumption in favor of its validity which is "one of the strongest known" to the law. *Piers* v. *Piers*, 2 H. L. Cas. 331. See *Bruns* v. *Cope*, 182 Ind. 289, 105 N. E. 471. This presumption is then said to give rise to another presumption, that of the termination of a prior marriage by death or divorce. *Hunter* v. *Hunter*, 111 Cal. 261, 43 Pac. 756; *Potter* v. *Clapp*, 203 Ill. 592, 68 N. E. 81. "Conflicting" with this presumption is that of the continuance of life of the former spouse. *Gilleland* v. *Martin*, 3 McLean (U. S.) 490; *Chicago & Alton R. Co.* v. *Keegan*, 185 Ill. 70, 56 N. E. 1088. The former presumption, however, is usually held to be "stronger" than the latter and to overthrow it. *The King* v. *Twyning*, 2 B. & Ald. 386; *Vreeland* v. *Vreeland*, 78 N. J. Eq. 256, 79 Atl. 336. But see *Goset* v. *Goset*, 112 Ark. 47, 164 S. W. 759. But this method of reasoning is entirely too mechanical. The so-called "presumption of validity" is but an outgrowth of the common-law presumption of innocence, which is of no evidential value. See 4 WIGMORE, EVIDENCE, §§ 2506, 2511. The presumption of the continuance of life is merely an inference of fact, of more or less value in varying circumstances. *The Queen* v. *Willshire*, 6 Q. B. D. 366; *Com.* v. *McGrath*, 140 Mass. 296, 6 N. E. 515. But even granting that these presumptions should be recognized they could not properly be said to be "conflicting."

They would nullify each other as rules of law, and leave the question one purely of fact, to be decided upon the balance of probability. *Turner* v. *Williams*, 202 Mass. 500, 89 N. E. 110. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, 343–351. A more satisfactory method is simply to assert a strong public policy in favor of the marriage, and require an equally strong balance of probability to overthrow it.

QUASI-CONTRACTS — MONEY PAID UNDER DURESS OR COMPULSION OF LAW — THREAT TO PROSECUTE A RELATIVE AS DURESS. — In an action on certain promissory notes, the defendant counterclaimed for the amount already paid on the notes, alleging that they had been extorted from him by the plaintiff's threats to prosecute the defendant's brother-in-law for a felony. There was no allegation as to whether a felony had or had not been committed, nor had any prosecution been begun. To this counter claim the plaintiff demurred. *Held*, that the demurrer was erroneously overruled. *Union Exchange National Bank* v. *Joseph*, 185 N. Y. Supp. 403.

In general, money paid because of threats and for no other reason, can be recovered. *Robertson* v. *Frank Brothers*, 132 U. S. 17; *Horner* v. *State*, 42 App. Div. 430, 59 N. Y. Supp. 96. And many courts permit such recovery even though the transaction was in the nature of compounding a felony. *Wilbur* v. *Blanchard*, 22 Idaho, 517, 126 Pac. 1069; *Nelson* v. *Leszczynski-Clark Co.*, 177 Mich. 517, 143 N. W. 606. See *Schoener* v. *Lessauer*, 107 N. Y. 111, 13 N. E. 741. But there is considerable authority to the contrary. *Jourdan* v. *Burstow*, 76 N. J. Eq. 55, 74 Atl. 124, aff'd, 78 N. J. Eq. 587, 81 Atl. 1133; *Haynes* v. *Rudd*, 102 N. Y. 372, 7 N. E. 287. Even under the latter rule, however, recovery will be denied only if it appears that a felony was actually committed, or a prosecution instituted. It might be urged that it is equally against public policy to permit suppression of the investigation of merely alleged crimes. On this view alone can the principal case be supported, unless it be that threats to prosecute a brother-in-law cannot constitute such duress as will justify a recovery. On this point the authorities differ. In some states an obligation may be avoided if incurred solely to relieve a son-in-law from prosecution. *Nebraska Mut. Bond Ass'n* v. *Klee*, 70 Neb. 383, 87 N. W. 476; *Fountain* v. *Bigham*, 235 Pa. St. 35, 84 Atl. 131. And if the benefit of the rule is to be extended beyond cases involving close blood relations, there seems to be no reason why it should not be applied in the principal case. The doctrine might be carried even further, and held to cover all cases where the obligor's freedom of will is coerced by threats of harm to another. See *Davies* v. *London Ins. Co.*, L. R. 8 Ch. Div. 469.

STATUTE OF FRAUDS — PART PERFORMANCE — WHAT ACTS ARE SUFFICIENT. — A purchaser orally agreed to buy land of a vendor to give to the purchaser's niece. In reliance on the gift, the niece entered into possession. The purchaser died before the sale's completion. *Held*, that the vendor may specifically enforce the contract against the purchaser's estate, for the benefit of the niece. *Hohler* v. *Aston*, [1920] 2 Ch. 420.

It is settled law that part performance of an oral contract to purchase land takes the case out of the operation of the Statute of Frauds. See FRY, SPECIFIC PERFORMANCE, 5 ed., § 578. By the prevailing rule it is sufficient part performance if the purchaser is put in possession under the contract. *Butcher* v. *Stapely*, 1 Vern. 363; *Earl of Aylesford's Case*, 2 Strange, 783. See BROWNE, STATUTE OF FRAUDS, 5 ed., § 467. Many American jurisdictions require something more. *Bradley* v. *Owsley*, 74 Tex. 69. See 5 POMEROY, EQUITY JURISPRUDENCE, 4 ed., § 2243. The prevailing rule was adopted at a time when the manifest hostility of the English Chancellors toward statutes was coupled with an exalted sense of their ethical responsibilities. It originally contemplated